

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:WI:BETombul
FILES-112089-08

date: March 14, 2008

to: Crystal Philcox
Health Coverage Tax Credit Program Manager

from: Carol A. Campbell
Division Counsel (Wage and Investment)

subject: TAA and the HCTC

This memorandum responds to your office's request for advice regarding the unextended provisions of the Trade Adjustments Act of 1974 (TAA). Specifically, you asked whether the IRS can continue to administer the Health Coverage Tax Credit (HCTC) even though the Trade Adjustment Act was not extended past December 31, 2007. After conferring with the Office of Legal Counsel in the Solicitor's Office in the Department of Labor (DOL), who have jurisdiction over issues concerning the TAA, we conclude that the IRS may continue to administer the HCTC to eligible TAA recipients and eligible ATAA recipients as long as the DOL continues to administer the TAA and ATAA Programs.

Analysis

Under Internal Revenue Code (IRC) section 35(c)(1), eligible TAA recipients and eligible alternative TAA recipients are considered eligible for the HCTC.¹ Eligible Pension Benefit Guaranty Corporation (PBGC) pension recipients are also considered eligible for the HCTC under IRC section 35(c)(1), but the unextended TAA legislation has no effect on PBGC pension recipients' ability to qualify for the HCTC.

¹ Section 35(c)(2) defines an "eligible TAA recipient" as any individual who is receiving for any day of the month a trade readjustment allowance under chapter 2 of Title II of the TAA, or who would be eligible to receive such allowance if section 231 of the TAA is applied without regard to subsection (a)(3)(B) of that section. Section 35(c)(3) defines "eligible alternative TAA recipient" as an individual who is a worker described in section 246(a)(3)(B) of the TAA who is participating in the program established under section 246(a)(1) of the TAA and is receiving a benefit for the month under section 246(a)(2) of the TAA. Therefore, if an individual receives TAA payments or ATAA payments from the DOL, or if an individual would receive TAA payments from the DOL except that the individual has not exhausted his or her unemployment benefits (as provided in TAA section 231(a)(3)(B)), the individual is eligible for the HCTC.

Interpretation and administration of the TAA and the ATAA fall under the DOL's jurisdiction. We coordinated with the Office of Legal Counsel of the Solicitor's Office in the DOL (Office of Legal Counsel) with regard to their interpretation of the termination of the TAA. This office, informed us that because DOL received full appropriations for the TAA Program through the end of fiscal year 2008, they concluded that the TAA Program would continue until that time (i.e., through September 2008) regardless of the stated termination date in the statute. The Office of Legal Counsel based their decision on well established appropriations law and the Office of Management and Budget concurred with their analysis. In addition, with regard to the ATAA Program, The Office of Legal Counsel interprets their statute to provide that it does not terminate until five years after it was implemented by the state. No state implemented the ATAA program before 2004, so the earliest the ATAA Program would terminate is 2009. In addition, the termination of the ATAA is phased out. That is, as long as a taxpayer qualifies for the benefits on or before the termination date, the taxpayer can continue to receive the benefits until he or she no longer qualifies for the benefits.

As long as the DOL continues to administer the TAA and ATAA Programs, the IRS is authorized to continue to administer the HCTC Program for eligible TAA and eligible ATAA recipients.

If you have any questions, please contact Bridget Tombul of my staff at 202-622-7679.